



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

FEB -8 2013

William Bristol
Gary F. Franke Co., L.P.A.
120 East Fourth Street, Suite 1040
Cincinnati, Ohio 45202

RE: MUR 6545
Fred Kundra for Congress Committee and
William Bristol, in his official capacity as
treasurer
Frederick L. Kundra, III
Robert L. Saur, Jr., as assistant treasurer of
the Fred Kundra for Congress
Committee

Dear Mr. Bristol:

On April 2, 2012, the Federal Election Commission notified the Fred Kundra for Congress Committee and you, in your official capacity as treasurer ("Committee"), Frederick L. Kundra, III, and Robert L. Saur, Jr., as assistant treasurer of the Committee, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended (the "Act"). A copy of the complaint was forwarded to you at that time. You filed a response on behalf of all respondents on April 13, 2012.

Upon further review of the allegations contained in the complaint and information provided by you, the Commission, on January 29, 2013, dismissed as a matter of prosecutorial discretion the allegations that the Committee and you, in your official capacity as treasurer, Frederick L. Kundra, III, and Robert L. Saur, Jr., as assistant treasurer of the Committee, violated 2 U.S.C. §§ 434(a), 434(b), and 433(a). The Commission also dismissed as a matter of prosecutorial discretion the allegation that Frederick L. Kundra, III violated 2 U.S.C. § 432(e). The Factual and Legal Analysis, which more fully explains the Commission's decisions, is enclosed for your information.

The Act requires that the principal campaign committee of a House candidate file a disclosure report no later than the 12th day before any election in which the candidate is seeking election. 2 U.S.C. § 434(a)(2); 11 C.F.R. § 104.5(a)(2)(i). The Act and Commission regulations also require authorized political committees to disclose all loans, including loans from a candidate to his or her authorized committee; to report the amount and nature of outstanding debts and obligations; and to disclose all disbursements. 2 U.S.C. § 434(b); 11 C.F.R.

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§ 104.3(a)-(b). Finally, an individual is deemed to be a "candidate" for purposes of the Act if he or she receives contributions or makes expenditures in excess of \$5,000. 2 U.S.C. § 431(2). Once an individual meets the \$5,000 threshold, he or she has 15 days to designate a principal campaign committee by filing a Statement of Candidacy with the Commission. 2 U.S.C. § 432(e)(1); 11 C.F.R. § 101.1(a). Each authorized campaign committee must file a Statement of Organization no later than ten days after designation. 2 U.S.C. § 433(a). The Commission cautions the Committee and you, in your official capacity as treasurer, Frederick L. Kundrata, III, and Robert L. Saur, Jr., as assistant treasurer of the Committee, to take steps to ensure that your conduct is in compliance with the Act and the Commission's regulations.

Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003) and Statement of Policy Regarding Placing First General Counsel's Reports on the Public Record, 74 Fed. Reg. 66,132 (Dec. 14, 2009).

If you have any questions, please contact Kasey Morgenheim, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,



William A. Powers
Assistant General Counsel

Enclosure
Factual and Legal Analysis

cc: Frederick L. Kundrata
Robert L. Saur, Jr.

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: Fred Kundra for Congress Committee MUR 6545
and William Bristol, in his official capacity
as treasurer
Fredrick L. Kundra, III
Robert L. Saur, Jr., as assistant treasurer of the
Fred Kundra for Congress Committee

I. INTRODUCTION

This rentter was generated by a Complaint filed with the Federal Election Commission by Mark Millen, alleging violations of the Federal Election Campaign Act of 1971, as amended (the "Act"), by Fredrick L. Kundra, III, the Fred Kundra for Congress Committee and William Bristol in his official capacity as treasurer ("Kundra Committee" or "Committee"), and Robert L. Saur, Jr. as the Kundra Committee's assistant treasurer, by failing to file disclosure reports and by filing incorrect reports with the Commission. Upon review of the Complaint, Response, and other available information, it appears that any potential violations of the Act were minor and do not warrant further use of Commission resources. Therefore, the Commission dismisses the allegations.

II. FACTUAL AND LEGAL ANALYSIS

Kundra was a candidate in the March 6, 2012, Republican primary election for U.S. House of Representatives in Ohio's Second Congressional District.¹ Kundra filed a Statement of Candidacy with the Commission on November 15, 2011, designating the Committee as his principal campaign committee. On the same date, the Kundra Committee filed its Statement of

¹ Kundra lost the primary election with approximately 3.44% of the vote. See <http://www.sos.state.oh.us/SOS/elections/Research/electResultsMain/2012Results/20120306repUSrep.aspx>.

1 Organization. The Complaint alleges that the Respondents committed five reporting violations
2 of the Act and Commission regulations. Compl. at 2.

3 A. Failure to File 2012 Pre-Primary Report

4 First, the Complaint alleges that the Respondents failed to file a Pre-Primary Report
5 before the March 6, 2012, Republican primary election. *Id.* at 2-3. The Response filed on behalf
6 of all Respondents explains that the Committee did not timely file its Pre-Primary Report
7 because of Bristol's mistaken belief that the report was not required when donations received
8 were under a certain threshold.² Resp. at 2. The Response states that the Committee filed its
9 Pre-Primary Report on April 11, 2012. *Id.*

10 The Act requires that the principal campaign committee of a House candidate file a
11 disclosure report no later than the 12th day before any election in which the candidate is seeking
12 election. 2 U.S.C. § 434(a)(2); 11 C.F.R. § 104.5(a)(2)(i). The Kundra Committee failed to
13 file its Pre-Primary Report until 36 days after the Republican primary election.

14 The Pre-Primary Report filed on April 11, 2012, disclosed \$820 in contributions
15 received, \$10,332.87 in operating expenditures, \$9,000 in debts and obligations owed by the
16 Committee, and a negative \$262.87 cash-on-hand balance. Given the limited amount of financial
17 activity disclosed on the report, the Commission dismisses as a matter of prosecutorial discretion
18 the allegation that Respondents violated 2 U.S.C. § 434(a). *See Heckler v. Chaney*, 470 U.S. 821
19 (1985).

² The Response notes that Kundra was a first-time candidate and that his campaign was "a first attempt for all involved." Resp. at 5.

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B. Failure to Identify Source of Loans

Second, the Complaint alleges that the Respondents failed to correctly identify the source of two loans reported in the Committee's Year-End Report, filed January 30, 2012. Compl. at 3. The Complaint asserts that the source of two loans — a \$500 loan dated November 4, 2011, and a \$12,246.08 loan dated December 1, 2011 — was incorrectly identified as "Fred Kundra for Congress Committee," which was the borrower, not the lender. *Id.* The Response contends that the loans were correctly classified as loans from candidate Kundra on the Year-End Report, but that the wrong entity box was inadvertently checked on the electronic form due to inexperience with FECfile. Resp. at 2.

The Act and Commission regulations require political committees to disclose all loans, including loans from a candidate to his or her authorized committee. 2 U.S.C. § 434(b)(2)(G)-(H); 11 C.F.R. § 104.3(a)(3)(vii). The Kundra Committee's Year-End Report disclosed the source of two loans as "Fred Kundra for Congress Committee." Both of these loans, however, were also classified as loans of "personal funds" on Schedule C and as loans made by the candidate on the report's summary page.

Under these circumstances where the loans were correctly identified as loans from the candidate's "personal funds," the Commission dismisses as a matter of prosecutorial discretion the allegation that Respondents violated 2 U.S.C. § 434(b). *Sze Heckler*, 470 U.S. 821.

C. Failure to Report Contributions or Debt

Third, the Complaint alleges that the Respondents failed to report contributions or debt. The Complaint notes that the Committee's first reported receipt was the \$500 loan dated November 4, 2011, and that the Committee's first reported disbursements pre-date that receipt. Compl. at 3. The Committee's Year-End Report discloses two disbursements of \$4,605 each to

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1 Pixels and Dots for “web design” on October 11, 2011. *Id.* The Complaint argues that the
2 Committee must have received unreported contributions — or, alternatively, did not report
3 debt — in order to make the payment to Pixels and Dots. *Id.* at 4. The Response states that at
4 the time Kundra approached the web design firm to begin website design and hosting, he did
5 not know whether he would run for office.³ Resp. at 2-3. The Response denies that the
6 Committee received any unreported contributions. *Id.* at 3.

7 The Act and Commission regulations require political committees to disclose all receipts
8 and disbursements. 2 U.S.C. §§ 434(b)(2), 434(b)(4); 11 C.F.R. §§ 104.3(a)-(b). Political
9 committees are also required to report the amount and nature of outstanding debts and
10 obligations. 2 U.S.C. § 434(b)(8); 11 C.F.R. § 104.3(d). Although the Complaint correctly notes
11 that the Committee disclosed \$9,210 in disbursements to Pixels and Dots before receiving
12 sufficient contributions and loans, the Committee’s Year-End Report, covering the time period of
13 October 1, 2011, through December 31, 2011, also discloses \$100 in contributions received and
14 \$12,746.08 in loans from the candidate. These loans of personal funds were likely the source of
15 the funds for the Pixels and Dots expenditures.

16 In light of the fact that the Committee disclosed sufficient receipts to fund these
17 expenditures within a single reporting period, the Commission dismisses as a matter of
18 prosecutorial discretion the allegation that Respondents violated 2 U.S.C. § 434(b). *See Heckler*,
19 470 U.S. 821.

20 **D. Failure to Report Expenditure for Vehicle Advertising**

21 Fourth, the Complaint alleges that the Respondents did not report an expenditure for
22 wrapping a vehicle in advertising. Compl. at 4. The Complaint cites a tweet posted on

³ Although the Response raises the timing of Kundra’s candidacy in connection with this allegation, that timing is addressed in part II(E), below.

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1 Kundra's Twitter page on February 6, 2012, which included a picture of a vehicle with
2 Kundra campaign advertising. Compl., Ex. 1. The Response asserts that the Committee
3 reported the February 14, 2012, expenditure in its Pre-Primary Report filed on April 11, 2012.
4 Resp. at 3.

5 The Act and Commission regulations require authorized committees to disclose all
6 disbursements. 2 U.S.C. § 434(b)(4); 11 C.F.R. § 104.3(b). The Pre-Primary Report discloses
7 two disbursements of \$548.48 and \$734.38 to Decal Impressions on February 14, 2012, for
8 "signs," one or both of which, respondent explains, was for the vehicle advertising.
9 Accordingly, it appears that the Kundra Committee reported the disbursement for the vehicle
10 advertising, albeit untimely.

11 The Commission therefore dismisses as a matter of prosecutorial discretion the allegation
12 that Respondents violated 2 U.S.C. § 434(b). *See Heckler*, 470 U.S. 821.

13 **E. Failure to Timely File a Statement of Candidacy**

14 Finally, the Complaint alleges that Kundra did not timely file his Statement of
15 Candidacy within 15 days of accepting \$5,000 in contributions or making \$5,000 in
16 expenditures. Compl. at 5. The Complaint notes that the Kundra Committee made
17 disbursements totaling \$9,210 on October 11, 2011, and yet Kundra did not file his Statement
18 of Candidacy until November 15, 2011. *Id.* The Response reiterates that Kundra was not sure
19 whether he would run for office at the time he made these disbursements. Resp. at 3-4. The
20 Response asserts that Kundra was not, however, "testing the waters." *Id.* Additionally, the
21 Response notes that, at the time of these disbursements, the Ohio Congressional districts had not
22 yet been determined through redistricting and Kundra was uncertain in which district he might

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1 be a candidate. *Id.* The Response asserts that Kundra filed as soon as was practicable and
2 within 15 days of becoming a candidate. *Id.* at 4.

3 An individual is deemed to be a "candidate" for purposes of the Act if he or she receives
4 contributions or makes expenditures in excess of \$5,000. 2 U.S.C. § 431(2). Once an individual
5 meets the \$5,000 threshold, he or she has 15 days to designate a principal campaign committee
6 by filing a Statement of Candidacy with the Commission. 2 U.S.C. § 432(e)(1); 11 C.F.R.
7 § 101.1(a). The Commission has established limited exemptions from these thresholds, which
8 permit an individual to test the feasibility of a campaign for federal office without becoming a
9 candidate under the Act. Commonly referred to as the "testing the waters" exemptions,
10 11 C.F.R. §§ 100.72 and 100.131 respectively exclude from the definitions of "contribution" and
11 "expenditure" those funds received and payments made solely to determine whether an
12 individual should become a candidate. 11 C.F.R. §§ 100.72, 100.131. "Testing the waters"
13 activities include, but are not limited to, payments for polling, telephone calls, and travel.⁴
14 11 C.F.R. §§ 100.72(a), 100.131(a). An individual who is "testing the waters" need not register
15 or file disclosure reports with the Commission unless and until the individual subsequently
16 decides to run for federal office or conducts activities that indicate he or she has decided to
17 become a candidate. *See id.*

⁴ Certain activities may indicate that the individual has decided to become a candidate and is no longer "testing the waters." Commission regulations set out a non-exhaustive list of activities that indicate that an individual has decided to become a candidate: whether the potential candidate is (1) using general public political advertising to publicize his or her intention to campaign for federal office; (2) raising funds in excess of what could reasonably be expected to be used for exploratory activities or undertaking activity designed to amass campaign funds that would be spent after he or she becomes a candidate; (3) making or authorizing written or oral statements that refer to him or her as a candidate for a particular office; (4) conducting activities in close proximity to the election or over a protracted period of time; or (5) taking action to qualify for the ballot under state law. 11 C.F.R. §§ 100.72(b), 100.131(b). These regulations seek to draw a distinction between activities directed to an evaluation of the feasibility of one's candidacy and conduct signifying that a decision to become a candidate has been made. *See Advisory Op. 1981-32 (Asken).*

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1 Although the Response asserts that Kandrata was not “testing the waters,” it states that
2 when Kandrata approached the web design firm Pixels and Dots, he was “unsure of whether or
3 not he was going to run for office,” in part because of the ongoing Ohio redistricting efforts.
4 Resp. at 4. This claim seems — at minimum — to fall within the “testing the waters” exemption
5 — that an individual is able to make payments for the purpose of determining whether to become
6 a candidate without triggering candidate status. *See* 11 C.F.R. § 100.131(a); Resp., Ex. 1.

7 From information on Kandrata’s campaign website, it appears that Kandrata announced
8 his candidacy for office on November 15, 2011, the same date he filed his Statement of
9 Candidacy with the Commission. *See* www.fredkandrata.com. The earliest evidence of activity
10 on the website is a post regarding Veterans Day on November 11, 2011. *Id.* This date is well
11 within the 15-day window permitted to file a Statement of Candidacy after deciding to become a
12 candidate. The Complaint does not allege, nor did the Commission find any available
13 information, that Kandrata conducted any other activities showing that Kandrata decided to
14 become a candidate before this time.

15 It appears that, under 11 C.F.R. § 100.131(a), the disbursements to Pixels and Dots on
16 October 11, 2011, may have been exempt from being reported as “expenditures” until Kandrata
17 was a “candidate.” In light of the fact that Kandrata and the Kandrata Committee do not appear
18 to have made any other expenditures, received any contributions, or conducted any other
19 activities before the disbursements to Pixels and Dots, and Kandrata’s Statement of Candidacy
20 was filed within 35 days of that disbursement, this allegation does not warrant further
21 Commission investigation. Accordingly, the Commission dismisses as a matter of prosecutorial
22 discretion the allegations that Kandrata violated 2 U.S.C. § 432(e) and Respondents violated
23 2 U.S.C. § 433(a). *See Heckler*, 470 U.S. 821.

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